TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL NOTE

SB 181 - HB 175

February 27, 2013

SUMMARY OF BILL: Defines "final return status" for the purposes of the Excise Tax Law and the Franchise Tax law as the status of any taxpayer that has commenced the process that will result in, or is intended to result in, the taxpayer ceasing to exist, or no longer being subject to franchise and excise tax, or no longer having any substantial remaining business or financial activity. Requires the final return status to apply to the first return that reflects any activity or event giving rise to such status, and to all subsequent returns filed by the taxpayers. Requires the taxpayer to file a return for each tax period while in the final return status.

Requires the franchise tax return to be prorated to cover the proportionate part of the year covered by the return, if the return covers less than a 12-month period, including the return of a taxpayer in final return status, but excluding any return based on a 52-53 week year. Requires, for taxpayers in final return status who effect a complete liquidation that is initiated and completed on the same date, the franchise tax to be computed utilizing net worth, or the minimum franchise tax base under Tenn. Code Ann. § 67-4-2108, on the date immediately preceding the liquidating event; otherwise, on any return of a taxpayer in final return status, the franchise tax shall be computed by using the average monthly value of net worth or the average monthly value of the real and tangible property owned in Tennessee. Requires such average monthly value to be determined by totaling the value of net worth as of the final day of each month of the tax period, or the book value of the real and tangible property owned in Tennessee as of the final day of each month of the tax period, and dividing that total by the number of months in the tax period.

Adds to the net loss, as determined for excise tax purposes, any amount excluded from federal gross income, for purposes of federal income tax, as a discharge of debt in Title 11 bankruptcy, when the taxpayer is insolvent, or when the discharged debt is qualified farm debt.

ESTIMATED FISCAL IMPACT:

Decrease State Revenue – $100,000/FY13-14 and FY14-15
Increase State Revenue – Net Impact – $100,000/FY15-16
$150,000/FY16-17
$800,000/FY17-18 and Subsequent Years

According to the Department of Finance and Administration, the Division of Budget, the Governor's recommended budget for FY13-14 reflects a decrease in state revenue to the General Fund of $100,000.

Assumptions:

- According to the Department of Revenue (DOR), the number of taxpayers that would be deemed to be in final return status and would be subject to the provisions of this bill is estimated to be 54. The total franchise and excise tax liability for these 54 taxpayers is estimated to be $123,181, representing the maximum potential annual decrease in state revenue.
- DOR estimates that the decrease in state revenues in FY13-14 and subsequent years will be approximately $100,000.
- According to DOR, the amount of debt discharged on federal tax returns is not currently known to DOR.
- There are approximately 830 taxpayers each year that file for bankruptcy. DOR estimates that the maximum net operating losses of these taxpayers, subject to the provisions of this bill and subject to the Excise Tax Law, are $14,144,854.
- The excise tax rate is equal to 6.5 percent. The maximum increase in state revenue is estimated to be $919,415 ($14,144,854 x 6.5%). According to DOR, the increase in state revenue will begin in FY15-16 as it will take some time for taxpayers going through the bankruptcy reorganization process to become profitable.
- The increase in state revenue due to the add-back of discharged debt is estimated to be $200,000 in FY15-16, $250,000 in FY16-17, and approximately $900,000 in FY17-18 and subsequent years.
- The net impact to state revenues as a result of this bill is estimated to be: a decrease of $100,000 in FY13-14 and FY14-15, an increase of $100,000 in FY15-16, an increase of $150,000 in FY16-17, and a recurring increase of $800,000 in FY17-18 and subsequent years.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Lucian D. Geise, Executive Director

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